



Order under Section 69 Residential Tenancies Act, 2006

Citation: IMH POOL XV LP v Cunningham, 2023 ONLTB 36381

Date: 2023-05-10

File Number: LTB-L-042273-22

In the matter of: 704, 1475 BLOOR ST
MISSISSAUGA ON L4X1R7

Between: IMH POOL XV LP Landlord

And

Evan Stevens and George Cunningham Tenants

IMH POOL XV LP (the 'Landlord') applied for an order to terminate the tenancy and evict Evan Stevens and George Cunningham (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on February 28, 2023. The Landlord was represented at the hearing by Emma Bennett. The Tenant, Evan Stevens, attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants was still in possession of the rental unit.
3. The lawful rent is \$2,560.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$84.16. This amount is calculated as follows: \$2,560.00 x 12, divided by 365 days.
5. The Tenant has paid \$5,137.94 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023, are \$16,202.06.

7. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$5.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,560.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
10. Interest on the rent deposit, in the amount of \$53.13 is owing to the Tenant for the period from May 2, 2022, to February 28, 2023.

Relief from Eviction

11. The Tenants do dispute the amount of rent arrears. The issue before the Board is whether it is appropriate to grant relief from eviction pursuant to s.83 of the *Residential Tenancies Act 2006*, (the 'Act').
12. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
13. Mr. Stevens submitted that he could immediately pay \$5000.00 toward the rent arrears. However, that would still leave over \$11,000 rent.
14. Mr. Stevens seemed eager to come up with a payment plan to pay down the rent arrears but could not come up with a concrete proposal at the hearing. Without a realistic payment plan to pay down the rent arrears, I do not find it appropriate to deny eviction.
15. However, Mr. Stevens seemed eager to preserve the tenancy, and should be given opportunity to do so. For this reason, I find it appropriate to delay eviction until June 30, 2023. This would give the Tenants ample time to pay off the rent arrears outstanding.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until June 30, 2023, pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$24,093.06 if the payment is made on or before May 31, 2023. See Schedule 1 for the calculation of the amount owing.

OR

- \$26,653.06 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.
- 3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after June 30, 2023, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
- 4. **If the Tenants do not pay the amount required to void this order the Tenant must move out of the rental unit on or before June 30, 2023**
- 5. If the Tenants do not void the order, the Tenant shall pay to the Landlord \$13,799.93. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
- 6. The Tenants shall also pay the Landlord compensation of \$84.16 per day for the use of the unit starting March 1, 2023, until the date the Tenant moves out of the unit.
- 7. If the Tenants do not pay the Landlord the full amount owing on or before May 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 22, 2023, at 6.00% annually on the balance outstanding.
- 8. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
- 9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after July 1, 2023.

May 10, 2023

Date Issued

Bryan Delorenzi

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on January 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2023

Rent Owing To May 31, 2023	\$29,020.00
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,137.94
Total the Tenant must pay to continue the tenancy	\$24,093.06

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 30, 2023

Rent Owing To June 30, 2023	\$31,580.00
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,137.94
Total the Tenant must pay to continue the tenancy	\$26,653.06

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$21,340.00
Application Filing Fee	\$186.00
NSF Charges	\$25.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$5,137.94
Less the amount of the last month's rent deposit	- \$2,560.00
Less the amount of the interest on the last month's rent deposit	- \$53.13
Total amount owing to the Landlord	\$13,799.93
Plus daily compensation owing for each day of occupation starting March 1, 2023	\$84.16 (per day)